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ORIGINAL

REPORT

of the

PROCEEDINGS OF THE

JUDICIAL CONFERENCE OF THE

UNITED STATES

September 22-23, 1982

COMPLETED

Washington, D.C.
1982

I

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

William E. Foley
Director

II

REPORT

of the

PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 22-23, 1982

Washington, D.C.
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III

THE JUDICIAL CONFERENCE OF THE UNITED STATES, 28 U.S.C. 331

§331. JUDICIAL CONFERENCE OF THE UNITED STATES

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. If the chief judge of the Court of Claims or the chief judge of the Court of Customs and Patent Appeals is unable to attend, the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend, and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

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JUDICIAL CONFERENCE OF THE UNITED STATES

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REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 22-23, 1982

The Judicial Conference of the United States convened on September 22, 1982, pursuant to the call of the Chief Justice of the United States, issued under 28 U.S.C. 331, and continued in session on September 23rd. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

Chief Judge Frank M. Coffin
Judge W. Arthur Garrity, Jr., District of Massachusetts

Second Circuit:

Chief Judge Wilfred Feinberg
Chief Judge Constance B. Motley, Southern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Chief Judge Gerald J. Weber, Western District of Pennsylvania

Fourth Circuit:

Chief Judge Harrison L. Winter
Judge Robert R. Merhige, Jr., Eastern District of Virginia

Fifth Circuit:

Chief Judge Charles Clark
Chief Judge John V. Singleton, Jr., Southern District of Texas

Sixth Circuit:

Chief Judge George C. Edwards, Jr.
Chief Judge Frank J. Battisti, Northern District of Ohio

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Seventh Circuit:

Chief Judge Walter J. Cummings
Chief Judge John W. Reynolds, Eastern District of Wisconsin

Eighth Circuit:

Chief Judge Donald P. Lay
Judge Albert G. Schatz, District of Nebraska

Ninth Circuit:

Chief Judge James R. Browning
Judge Manuel L. Real, Central District of California

Tenth Circuit:

Chief Judge Oliver Seth
Chief Judge Luther B. Eubanks, Western District of Oklahoma

Eleventh Circuit:

Chief Judge John C. Godbold
Judge William C. O'Kelley, Northern District of Georgia

District of Columbia:

Chief Judge Spottswood W. Robinson, III
Chief Judge Aubrey E. Robinson, Jr., District of Columbia

Court of Claims:

Chief Judge Daniel M. Friedman

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Circuit Judges Irving R. Kaufman, Anthony M. Kennedy, Otto R. Skopil Jr., Edward A. Tamm, and Gerald B. Tjoflat; Senior Circuit Judges Clement F. Haynsworth, Jr. and Carl McGowan; Senior District Judges Elmo B. Hunter and Thomas J. MacBride; and District Judges T. Emmet Clarie, Robert E

DeMascio, Edward T. Gignoux and Alexander Harvey II, attended all or some of the sessions of the Conference.

The Deputy Attorney General of the United States, Honorable Edward C. Schmults, and the Solicitor General of the United States, Honorable Rex E. Lee, addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

William E. Foley, Director of the Administrative Office of the United States Courts; Joseph F. Spaniol, Jr., Deputy Director; James E. Macklin, Assistant Director; William J. Weller, Legislative Affairs Officer; Michael J. Remington, Deputy Legislative Affairs Officer; Deborah H. Kirk, Chief, Office of Management Review; and Charles W. Nihan, Deputy Director of the Federal Judicial Center, attended sessions of the Conference. Mark W. Cannon, Administrative Assistant to the Chief Justice, and John Yoder of the Supreme Court staff, attended sessions of the Conference. The Director of the Federal Judicial Center, A. Leo Levin, presented the Center's Annual Report.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Director of the Administrative Office of the United States Courts, William E. Foley, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1982. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

Separate reports on payments under the Equal Access to Justice Act and on the operation of equal employment opportunity plans in the courts, filed by the Director, were also received by the Conference and authorized to be released.

JUDICIAL BUSINESS OF THE COURTS

Mr. Foley reported that appeals docketed in the United States courts of appeals during the year ended June 30, 1982 increased 6 percent to a record 27,947 appeals filed. During the year the courts of appeals terminated 27,984 appeals, an

increase of 11.6 percent over the previous year and 38 appeals more than the number filed. As a result, the number of appeals pending on June 30, 1982 declined for the first time since 1958 to 21,510 pending appeals.

Civil cases filed in the United States district courts during the year ended June 30, 1982 were 206,193, an increase of 14.2 percent over the 180,576 civil cases filed during the previous year. There were 189,473 civil cases terminated, 6.5 percent more than the previous year, and the pending civil caseload increased 8.9 percent to a record 205,434 cases as of June 30, 1982.

Criminal cases filed in the district courts in 1982 climbed to 32,682, an increase of 4.5 percent over 1981. There were 31,889 criminal cases closed during the year, and on June 30, 1982 there were 16,659 criminal cases pending, an increase of 5.1 percent. During the year prosecutions for marijuana drug violations increased 39.9 percent and all other drug related cases increased 11.5 percent. Prosecutions under laws relating to weapons and firearms continued to increase during the year, rising 36.2 percent. Prosecutions for forgery and counterfeiting also rose substantially increasing 17.6 percent, while auto theft prosecutions increased 21.0 percent.

During the year ended June 30, 1982 there were 367,866 bankruptcy cases, representing 527,342 separate estates, filed in the United States bankrupcy courts. An additional 469 estates in cases originally filed under the Bankruptcy Act prior to October 1, 1979 were reopened. The bankruptcy courts thus received 527,811 new bankruptcy cases during the year, an increase of 1.7 percent. This is a leveling off in the filing of bankruptcy estates from the increase of 43.8 percent in 1981 and 59.4 percent in 1980. There were 412,852 bankruptcy estates closed during the year, an increase of 28.3 percent over the previous year, but almost 215,000 estates less than the number filed. As a result the number of estates pending on the dockets of the bankruptcy courts on June 30, 1982 increased 18.6 percent to a record 723,871.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the year ended June 30, 1982 the Panel had acted on 683 civil

actions pursuant to 28 U.S.C. 1407. Of that number, 454 actions were centralized for consolidated pretrial proceedings with 229 actions already pending in the various transferee districts at the time of transfer. The Panel denied transfer of 155 civil actions.

Since its creation in 1968 the Panel has transferred 11,094 civil actions for centralized pretrial proceedings in carrying out its responsibilities. As of June 30, 1982, approximately 8,814 cases had been remanded for trial, reassigned within the transferee district, or terminated in the transferee court. On June 30, 1982 there were 2,280 transferred civil actions being processed by transferee judges.

COMMITTEE ON THE JUDICIAL BRANCH

Judge Irving R. Kaufman, Chairman of the Committee on the Judicial Branch, submitted the Committee's report.

JUDICIAL SALARY CONTROL ACT OF 1981

S. 1847, 97th Congress, is a bill to prohibit any future increases in salaries of Federal judges absent an affirmative record vote in both Houses of Congress, and to require an annual review by both Houses of Congress of all standing substantive program authorizations for judicial branch activities. The Conference in March 1982 (Conf. Rept. p. 5) recognized the ultimate final authority of Congress to set judicial salaries, but expressed its preference for the draft legislation to create a biennial commission on judicial salaries previously approved by the Conference. The Conference further agreed that the bill's objectives with respect to annual program authorizations are unnecessary and unwise.

Judge Kaufman stated that the Committee had again reviewed this proposed legislation and concluded that the Judicial Conference should renew its opposition to the passage of S. 1847 or any successor legislation. Upon the recommendation of the Committee the Conference adopted the following resolution:

> Resolved, that the Judicial Conference of the United States opposes the passage of S. 1847 or of any bill replacing or resembling it, or

providing for annual program oversight of judicial operations.

COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

Judge Kaufman stated that the Committee had unanimously endorsed pending legislation, S. 2671, 97th Congress, which would establish a Commission on the Bicentennial of the Constitution to promote and coordinate activities to commemorate the wisdom and endurance of that document. The Committee noted that the bill would provide for the appointment of Commission members by the President from lists of nominees submitted by the Speaker of the House, the President Pro Tempore of the Senate and the Chief Justice of the United States. The Conference agreed that a Bicentennial Commission with appointments made in cooperation with all three separate branches of the Government will enable the Nation to celebrate the bicentennial appropriately and voted to approve the legislation.

The Conference authorized the release of the Committee's report to all Federal judges.

COMMITTEE ON COURT ADMINISTRATION

Judge Elmo B. Hunter, Chairman of the Committee on Court Administration, presented the report of the Committee.

ADDITIONAL JUDGESHIPS

Judge Hunter informed the Conference that the Committee had reviewed the results of the 1982 biennial survey conducted by the Subcommittee on Judicial Statistics and had voted to recommend the creation of additional judgeships in the United States courts of appeals and in the United States district courts. Since the Congress has not as yet acted on the Conference recommendations for additional judgeships resulting from the 1980 biennial survey, the Committee's recommendations include those previously made by the Conference.

Upon the recommendation of the Committee, the Conference recommended the creation of additional judgeship positions in the United States courts of appeals as follows:

District of Columbia Circuit	1
First Circuit	2
Second Circuit	2
Third Circuit	2
Fourth Circuit	1
Sixth Circuit	4
Seventh Circuit	2
Eighth Circuit	1
Ninth Circuit	5
Tenth Circuit	2
TOTAL	22

Upon the recommendation of the Committee the Conference also recommended the creation of additional permanent and temporary judgeships in the following United States district courts, including the conversion of certain temporary judgeship positions to permanent status:

First Circuit:

Massachusetts	1 + 1 temporary
Rhode Island	1

Second Circuit:

Connecticut	1
New York, Northern	1
New York, Eastern	2
New York, Western	1 temporary

Third Circuit:

New Jersey	3

Fourth Circuit:

Maryland	1
North Carolina, Eastern	1 temporary
Virginia, Eastern	1

Fifth Circuit:

Louisiana, Western	1
Mississippi, Northern	1
Mississippi, Southern	2
Texas, Eastern	2
Texas, Western	1

Sixth Circuit:

Kentucky, Western	1
Michigan, Eastern	2
Ohio, Northern	1 temporary + t/p*
Tennessee, Eastern	1
Tennessee, Western	1

Seventh Circuit:

Illinois, Northern	3 + 1 temporary
Illinois, Southern	1
Indiana, Northern	1 temporary

Eighth Circuit:

Arkansas, Western	1 temporary
Minnesota	t/p*
Missouri, Eastern	1

Ninth Circuit:

Alaska	1
California, Central	4
Hawaii	1
Montana	1
Washington, Western	1 + 1 temporary

*Existing temporary position to be converted to permanent.

Tenth Circuit:

Oklahoma, Western	1
Wyoming	1

Eleventh Circuit:

Alabama, Southern	1
Florida, Southern	3
Georgia, Middle	1
Total	43 + 8 temporary + 2 temps. to be made permanent

The Conference also authorized the Committee to consider further the need for additional judgeship positions in the Court of Appeals for the Fifth Circuit, and any emergency requests from individual courts and to report thereon at the next session of the Conference.

UNITED STATES IMMIGRATION COURT

H.R. 5649 and H.R. 5771, 97th Congress, are identical bills to amend the Immigration and Nationality Act to create an Article I United States Immigration Court within the Executive Branch consisting of 50 trial judges, including the chief judge, and seven appellate judges all of whom are to be appointed by the President by and with the advice and consent of the Senate to serve for terms of 15 years and to receive the same salaries as circuit and district judges.

Jurisdiction would be exclusive in the trial division of the court relative to the determination of (a) exclusion cases, (b) deportation cases, and (c) rescission of adjustment of status cases. In addition, the trial division would determine all applications for discretionary relief properly raised in the proceedings, including those relating to bond, parole, habeas corpus, or detention of an alien in such proceedings. The powers of the district courts to issue writs of habeas corpus and extraordinary writs, and to order injunctive and declaratory relief, would be removed from these courts and made exclusive in the Immigration Court.

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The appellate division of the court would hear and determine appeals from (a) final decisions of asylum officers, (b) final adjudicatory decisions of service concerning (1) administrative fines and penalties, (2) petitions for classification, (3) petitions to classify an alien as an orphan, (4) applications for the exercise of discretionary authority, and (5) final decisions of the judges of the trial division. Decisions of the appellate division would be reviewable by the United States Supreme Court (1) by appeal from a decision holding an Act of Congress unconstitutional, and (2) by writ of certiorari granted upon a petition in a case which did not originate before an asylum officer.

Although expressing concern over the constitutionality of several provisions in the bills, the Committee recommended that the Conference take no position on the merits of the legislation. If, however, the Congress determines that there is a need for a separate Immigration and Naturalization Court, then the Committee recommended that the Conference take a position consistent with its previously enunciated recommendations on the creation of a Social Security Court, or a Court of Veterans Appeals, under Article I of the Constitution; that is, that the court be created within the Executive Branch of Government, that appeals from decisions of the court not be mandatorily directed to the Supreme Court but handled in the same manner as appeals from the Tax Court (to the appropriate court of appeals), and that judicial review by the Article III courts be limited to the review of constitutional issues and questions of statutory interpretation. This recommendation was approved by the Conference.

SOCIAL SECURITY COURT

H.R. 3865 and H.R. 5700, 97th Congress, would create an Executive Branch Social Security Court under Article I of the Constitution to serve as a judicial forum to review (1) all decisions rendered under the old-age, survivors, and disability insurance programs, and (2) all final determinations under the supplemental security income program. The bills differ only in that H.R. 3865 would create an intermediate review board to affirm, reverse, remand, or modify an administrative law judge's decision before it becomes the final decision of the Secretary.

The Committee recommended that the Conference reaffirm its previous recommendation (Conf. Rept. Sept. 1981, p. 67) that factual determinations be made final in the Article I tribunal and that judicial review in Article III courts be restricted to issues of constitutionality or statutory interpretation only. Further, appellate review should be provided in the same manner as appeals from the Tax Court; that is, to the appropriate United States court of appeals rather than the Court of Appeals for the District of Columbia Circuit only.

JUDICIAL REVIEW OF THE DENIAL OF VETERANS CLAIMS

S. 349, 97th Congress, is a bill to provide for the judicial review of denials of veterans claims. The bill would establish procedures within the Veterans Administration for the adjudication of veterans claims, require the Veterans Administration to conform to the rule-making procedures of Sec. 553 of the Administrative Procedure Act and provide for the judicial review of final decisions of the Board of Veterans Appeals in the district courts.

The Conference in March 1963 (Conf. Rept. p. 18) disapproved legislation to provide for the review of decisions of the Administrator of Veterans Affairs in the district courts and recommended that jurisdiction be vested in a special Executive Branch court of appeals. This position was reaffirmed by the Conference in March 1978 (Conf. Rept. p. 9). Because of the constantly growing caseloads of the district courts and in the belief that it was not practical or desirable to impose additional case filings involving veterans appeals on these courts, the Conference in September 1981 (Conf. Rept. p. 65) voted to recommend that the review of veterans claims be conferred exclusively upon the Board of Veterans Appeals or upon a new Executive Branch Article I court, noting that the appellate review of the decisions of the Board of Veterans Appeals, or a new Executive Branch court, by the district courts, courts of appeals and Supreme Court, is most undesirable in view of the potential inpact on the caseloads of these courts. In September 1981 the Conference also noted that if judicial review were deemed to be appropriate, it should be limited to the review of constitutional issues and questions of statutory interpretation.

At the suggestion of the Committee the Conference voted to renew its recommendation to the Congress that any initial review of a decision by the Veterans Administration denying a veteran's claim be made by the Board of Veterans Appeals or a new Executive Branch Court of Veterans Appeals and that any appellate review thereafter by district courts be limited to constitutional issues and questions of statutory interpretation.

CONTRIBUTION AND CLAIMS REDUCTION IN ANTITRUST CASES

H.R. 1242, H.R. 4072, H.R. 5794, and S. 995, 97th Congress, would all create rights of contribution and claims reduction in private civil antitrust cases. The Chairman of the House Committee on the Judiciary had requested Conference views and assistance on the issue of "whether these proposals would substantially add to the complexity and burden of private antitrust litigation".

Upon the recommendation of the Committee, the Conference voted to take no position on the wisdom or propriety of adopting legislation adding principles of contribution and claims reduction to antitrust law. The Conference, however, voted to report to the Chairman of the Committee: (1) that contribution, as contemplated in H.R. 1242, H.R. 4072 and H.R. 5794, may substantially add to the complexity and burden of managing private antitrust litigation by enabling defendants to add new claims and parties, thereby noticably lengthening the time between filing and disposition of antitrust actions; (2) that antitrust actions with contribution, including multi-party class actions, will be manageable, but will require a vigorous and careful attention by trial judges and will materially add to the quantity of time to be devoted to such cases; (3) that contribution may complicate the settlement process, thereby expanding the time judges must spend on it, and will likely reduce the settlement incentives, thereby tending to lower the probability of settlement to an appreciable but not otherwise predictable degree; (4) that a time limitation for bringing claims of contribution would be of genuine assistance in bringing them to a conclusion, if contribution is adopted; and (5) that claim reduction does not seemingly involve unmanageable impact or burdens.

CONGRESSIONAL REDISTRICTING

H.R. 5529, 97th Congress, is a bill to impose certain objective requirements on State legislatures and Federal courts with respect to the establishment of congressional districts on the basis of the most recent dicennial census, and for other purposes. The bill would require that congressional districts (1) be drawn with regard to natural geographic barriers; (2) to the extent consistent with geography coincide with the boundaries of local political subdivisions; (3) to the extent consistent with the first two standards, be compact in form; (4) specify that a 2 percent variation from absolute numerical equality would be "reasonable"; (5) prohibit political gerrymandering; and (6) prohibit the drawing of boundaries that would deny effective voting representation to any minority group. Any civil action to determine "substantial compliance" with these guidelines would be required to be heard by a three-judge court.

The Conference in September 1961 (Conf. Rept. p. 80) considered similar legislation and took the view that " the grant of jurisdiction to the district courts proposed by the bill involves a question of public policy for Congress to determine" and voted to take no action on the bill. In September 1963 the Conference considered bills that would provide that congressional districts be composed of contiguous and compact territory and voted to take no action on these bills "since they are matters for congressional policy rather than for judiciary consideration" (Conf. Rept. p. 70).

Since H.R. 5529 more clearly involves an issue of policy than the bills previously considered by the Conference, the Committee recommended that the Conference take no position with respect to the proposals contained in this bill. This recommendation was approved by the Conference.

REVIEW OF DECISIONS OF THE EMPLOYEES' COMPENSATION APPEALS BOARD

S. 2296, 97th Congress, is a bill to provide district court jurisdiction to review decisions of the Department of Labor Employees' Compensation Appeals Board. Specifically, the bill would add a Section 1367 to Title 28, United States Code, to provide that "district courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Employees' Compensation Appeals Board, established pursuant

to Sec. 8149 of Title 5, United States Code, and to enjoin or suspend, in whole or in part, any decision or order of such Board."

Judge Hunter reported that the Committee had been unable to obtain any information with respect to the need for this legislation and the problem to which it is addressed and its potential impact upon the courts and determined not to take any position until completion of a Congressional study of its need and impact.

JUDICIAL RESTRAINT ACT

H.R. 5181, 97th Congress, would prohibit any Federal court from making any decision, entering any judgment, or issuing any order "which, or the effect of which, would require funds to be expended from the United States Treasury or from the treasury of any State for a specific purpose unless the Congress, or the legislature of such State, as the case may be, has adopted legislation authorizing and appropriating funds to be expended for such purpose." A violation would make a justice or judge of the United States subject to impeachment.

It was the view of the Committee that H.R. 5181 is of dubious constitutionality to the extent that it would limit the powers of the Federal courts to fashion remedies for violations of the Constitution and Federal laws, and in any event would raise future policy problems for both the Legislative and Judicial Branches of the Federal Government. Upon the recommendation of the Committee the Conference disapproved the bill.

JURISDICTION OF BANKRUPTCY COURTS

H.R. 6109 and H.R. 6978, 97th Congress, are bills to amend the Bankruptcy Act of 1978 to provide that bankruptcy courts would be established as independent courts of general jurisdiction under Article III of the Constitution parallel to the United States district courts. Both bills were introduced as proposed remedies to problems arising from provisions in the Bankruptcy Act of 1978 which were examined by the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipeline Co., __ U.S. __ (June 28, 1982).

Judge Hunter stated that the Executive Committee of the Conference had met to consider these bills and had voted

to recommend in lieu thereof legislation to continue bankruptcy courts under Article I of the Constitution but to give to the district courts jurisdiction over proceedings required to be heard in Article III courts. The legislation recommended by the Executive Committee was subsequently embodied in H.R. 7132, 97th Congress. The Conference thereupon ratified the action taken by the Executive Committee, recommended enactment of H.R. 7132, and recommended that H.R. 6109 and H.R. 6978 not be enacted.

VENUE IN COURTS OF APPEALS AND DISTRICT COURTS

S. 2419, 97th Congress, is a bill to amend Title 28, United States Code, regarding venue and for other purposes. The bill is similar to various bills introduced in the 96th Congress and previously considered by the Conference at its session in March 1980 (Conf. Rept. p. 11).

The first section of the bill incorporates a procedure for random selection when proceedings challenging agency action have been instituted in two or more circuits within five days of each other, a proposal previously approved by the Conference. It also has a provision requiring any court of appeals in which a proceeding with respect to agency action is pending to transfer the proceeding to the court for a circuit "in which the action under review would have a substantially greater impact, unless the interest of justice required" the court to retain the proceeding or to transfer it to a circuit other than one in which the impact would be substantially greater.

Sec. 2 would require the Administrative Office to administer this system of random selection.

Sec. 3 would amend the venue statute in actions against Federal officers and agencies by providing that venue in the district where a defendant or plaintiff resides is proper only if "the agency action or failure to act that is the subject of the lawsuit would substantially affect the residents of that judicial district" and by providing that a cause of action shall be deemed to have arisen for purposes of 28 U.S.C. 1391(e)(2) in the district or districts in which the residents would be substantially affected by the action or failure to act. This section also provides that if an action of a local environmental nature is filed in the District of Columbia, the plaintiff is

required to send a copy of the complaint to the Attorney General of each state affected by the action.

Finally, Sec. 4 of the bill would amend 28 U.S.C. 1404(a) to require district courts to transfer actions against the United States or Federal agencies or officers to a district in which the action would have a substantially greater impact, unless the interest of justice required the court to retain the action or transfer it somewhere else.

Prior bills have contained several different approaches to a solution of the perceived problem. Some have dealt with all cases involving the Federal government, whether they involved environmental issues or other issues, while other bills have spoken only to environmental cases, but included private litigation as well as governmental litigation. Some of the bills placed limitations on where a suit might be brought, while others contained a transfer provision. S. 2419 is an amalgam of these various ideas. The notice provision contained in Sec. 3 of the bill deals only with cases of a "local environmental nature", while the amendments to Sections 1391(e) and 1404(a) would reach all actions to which Federal agencies or officers are parties, and the amendment to Sec. 2112 would apply to all proceedings in courts of appeals for review of agency action. The amendment of Sec. 1391(e) is a limitation on venue while the amendments of Sections 1404(a) and 2112 are transfer provisions.

The Conference had previously taken the position that although considerations of venue in particular types of cases are matters of policy for congressional determination, a more narrowly drawn bill is preferable since it is not possible to determine the effect of a broad amendment to the venue statute.

Upon the recomendation of the Committee, the Conference voted (1) to reaffirm its position that considerations of venue in particular types of cases are matters of policy for Congress to decide; (2) to reaffirm its position that it is not possible to determine the effect of a broad amendment to the venue statute and thus question, on that ground, so much of S. 2419 as would amend 28 U.S.C. 1391(e) in all suits against Federal agencies and officers; and (3) to ask Congress to consider (a) whether the problem to which the legislation is addressed is really so common and so serious as to justify the expense and inconvenience of

administering a new venue provision, and (b) the possibility that the legislation would impose on litigants and the courts the essentially wasteful burden of an extensive trial to determine the appropriate place of trial.

NATIONAL COURT OF APPEALS AND INTERCIRCUIT TRIBUNAL OF THE UNITED STATES COURTS OF APPEALS

S. 2035, 97th Congress, is a bill to establish a National Court of Appeals and for other purposes. The bill is similar to S. 1529, 97th Congress, except that it provides for a position of "Chancellor of the United States appointed by the Chief Justice from amongst judges on active duty as members of a United States Circuit Court of Appeals" who would, in turn, establish a pool of judges to serve on the National Court of Appeals. The Conference in March 1982 (Conf. Rept. p. 18) voted to take no position on whether a new court or tribunal should be created at this time, but asked the Committee to conduct a further study. The Committee recommended that the Conference express no position on whether a new court or tribunal should be created but that, if legislation is to be enacted, a proposal containing a sunset provision, such as the pending intercircuit tribunal proposal (H.R. 4762, 97th Congress), would be preferable to the creation of a National Court of Appeals at this time. This recommendation was approved by the Conference.

NATIONAL JUDICIAL STUDY COMMISSION

The Conference in March 1982 (Conf. Rept. p. 20), authorized the Committee to consider further the proposals to create commissions to study the jurisdiction of State and Federal courts, set out in S. 675 and S. 1530, 97th Congress, because of the multiplicity of issues presented by several aspects of the bills. It was the view of the Committee that the creation of a Commission to study the jurisdiction of State and Federal courts on a long range basis is desirable, but that its creation should not interfere with the enactment of jurisdictional changes, such as the abolition of diversity of citizenship jurisdiction, which have already been thoroughly studied and recommended by the Conference, and further that two study commissions should not be created.

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Upon the recommendation of the Committee, the Conference reaffirmed its approval of the creation of a temporary study commission, as provided in S. 675, and approved the concept of a study group on the future of the judiciary, but expressly recommended that no permanent commission be created.

TECHNICAL AMENDMENTS TO TITLE 28, UNITED STATES CODE, SECTION 1364

Judge Hunter informed the Conference that title 28, United States Code, now contains three subsections all having the same designated Sec. 1364. The Conference thereupon voted to call this situation to the attention of the Congress and recommend that it be corrected by numbering the sections consecutively and by making necessary conforming changes in the table of sections and in cross-referencing.

RESIDENCES OF CLERKS OF COURT

H.R. 78, 97th Congress, would amend 28 U.S.C. 751(c) to permit any district or bankruptcy court clerk to reside either "in the district for which he was appointed, or within 20 miles of his official station." At present, only the clerks of the district courts for the District of Columbia and the Southern District of New York may avail themselves of the 20 mile exception. There is no restriction on the residences of clerks of the courts of appeals.

The Committee could see no reason to limit the place of residence of clerks of court, particularly in these days of rapid transportation and communication. The Conference thereupon voted to advise the Chairman of the House Judiciary Committee, who had requested Conference views, that the Conference approves the legislation.

PLACES OF HOLDING COURT

H.R. 5526, 97th Congress, is a bill to transfer four counties from one division of the Northern District of Georgia to another division in the same district. The judges of the district court recommended approval of the bill, but the Judicial Council of the Eleventh Circuit recommended the transfer of all counties except Cherokee County. Upon the

recommendation of the Committee the Conference concurred with the action of the circuit council.

WAIVER OF OVERPAYMENTS

Sec. 5584 of Title 5, United States Code, authorizes the Comptroller General or the heads of Executive agencies to waive certain claims against employees arising out of erroneous overpayments. There is no similar waiver power with regard to overpayments to employees of the Judiciary. To remedy this situation the Judicial Conference approved the proposed legislation submitted by the Committee and authorized its transmission to the Congress with a recommendation that it be enacted into law.

COURT INTERPRETERS ACT

The Court Interpreters Act requires the Director of the Administrative Office to "prescribe, determine, and certify the qualifications of persons who may serve as qualified interpreters." 28 U.S.C. 1827(b). Since June 1979 the Administrative Office has been conducting certification examinations and the Director has been certifying persons to interpret in the Spanish language. In the last year the district courts have used interpreters for 26 separate languages. Next to Spanish, the highest use in 1981 was for Haitian Creole interpreters for about 200 appearances. The number of appearances for other languages did not exceed three or four during the year.

It was the view of the Committee that the Court Interpreters Act should be amended to give the Director the discretion to limit the languages for which he will establish certification programs. The only uniform way to certify a person's ability to interpret is by a skills' performance test. These tests are expensive to develop and for some exotic languages there may not be enough experts to develop them, nor sufficient candidates to make an examination worthwhile. To accomplish this change the Committee submitted proposed amendments to Sections 1827(b), (d), and (i) of Title 28, United States Code, which the Conference approved for transmission to the Congress.

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

The Federal Courts Improvement Act of 1982, P. L. 97-164, amended 28 U.S.C. 456 to authorize the Director, subject to regulations approved by the Conference, to reimburse a judge for "actual and necessary expenses of subsistence actually incurred" while the judge is "attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days." For the purpose of implementing this amendment, the Committee submitted and the Conference approved the following new subitem (3) to be added to Section 3(1)(a) of the Travel Regulations for Justices and Judges.

> (3) For extended absence during a continuous period of more than 30 calendar days, while attending court or transacting official business under an assignment away from a judge's official duty station, but within the conterminous United States, as authorized by Chapter 13, Title 28, United States Code, claims for actual expenses of subsistence shall be for such expenses actually incurred, not to exceed a maximum daily expense allowance of $125. For such extended assignment outside the conterminous United States, the maximum daily subsistence allowance is the authorized per diem prescribed for the area, plus $83. In those instances where special circumstances warrant, the Director of the Administrative Office may raise these limits upon written request explaining the need for the increase. Claims for reimbursement under this paragraph should be accompanied by a copy of the assignment.

The Committee was authorized to consider further the prospects of amending the statute to authorize reimbursement of the actual expenses of judges whenever they travel on official business.

Judge Hunter also pointed out that the Travel Regulations for Justices and Justices adopted by the Conference in September 1980 (Conf. Rept. p. 67) provided that "a judge may be reimbursed for travel and subsistence

expenses to testify before a congressional committee on behalf of the judiciary, or at the request of a congressional committee. No reimbursement may be made for a voluntary appearance before a congressional committee." The intent of the regulation is to provide reimbursement to those judges who appear before Congress to present the official position of the Judiciary as established by the Conference or one of its Committees or Subcommittees. It was not intended to provide reimbursement to those judges who represent private groups, such as the American Bar Association, Federal District Court Judges Associations, or the National Conference of Bankruptcy Judges. Since the regulations were unclear in this respect, the Executive Committee of the Conference approved the following amendment to the regulations:

> A judicial officer may be reimbursed for travel to testify before a Congressional Committee on behalf of the Judiciary only if he has been designated to do so by the Presiding Officer of the Judicial Conference, a chairman of a Judicial Conference Committee, or the Director of the Administrative Office. No reimbursement may be made for appearances before a Congressional Committee or subcomittee if a judicial official is representing a private group or association, or himself, nor may reimbursement be made for appearances in cases in which a judge solicits a Congressional panel or Member to obtain an invitation to testify for purposes of expressing his or her personal opinions. In the latter two instances a judicial official may choose to appear to testify, but reimbursement from funds appropriated for the administration of the judicial branch may not be made.

The Conference thereupon ratified the action taken by the Executive Committee.

LITIGATION EXPENSES OF JUDICIAL OFFICERS

The Federal Courts Improvement Act of 1982 amended 28 U.S.C. 463, effective October 1, 1982, to read as follows:

> "Whenever a Chief Justice, justice, judge, officer, or employee of any United States court is sued in

his official capacity, or is otherwise required to defend acts taken or ommissions made in his official capacity, and the services of an attorney for the Government are not reasonably available pursuant to chapter 31 of this title, the Director of the Administrative Office of the United States Courts may pay the costs of his defense. The Director shall prescribe regulations for such payments subject to the approval of the Judicial Conference of the United States."

Judge Hunter submitted to the Conference a set of regulations which had been reviewed and recommended by the Committee. In accordance with the statute the regulations were approved by the Conference.

MISCELLANEOUS FEES

The Federal Courts Improvement Act of 1982 added a new Sec. 1926 to Title 28, United States Code, authorizing the Judicial Conference to prescribe from time to time the fees and costs to be charged and collected in the United States Claims Court. Upon the recommendation of the Committee the Conference approved the following fee schedule to be effective October 1, 1982:

Fees to be Charged for Services Performed by the Clerk of the United States Claims Court (except that no fees are to be charged for services rendered on behalf of the United States):

1. For filing a civil action or proceeding, $60.00, plus $1.00 for each additional plaintiff demanding a separate judgment;

2. For reproducing any record or paper, $.50 per page. This fee shall apply to paper copies made from either: (a) original documents; or (b) microfiche or microfilm reproductions of the original records;

3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $2.00;

4. For admission of attorneys to practice, $15.00 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $3.00;

5. For receipt of a monthly listing of court orders and opinions, $10.00 per year.

No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

SPACE UTILIZATION SURVEY

Judge Hunter informed the Conference that the Administrative Office had conducted a year-long restudy of the need to retain certain space presently charged to and paid for by the Judiciary. The prior survey resulted in an Administrative Office recommendation for closing facilities in 18 communities. Because either the district court or the circuit council, or both, recommended that facilities be retained at Globe, Arizona; Fort Scott, Kansas; Littleton, New Hampshire; and Miami, Oklahoma, a restudy was deemed necessary.

The Committee reported that the district court in Arizona no longer objected to the release of facilities at Globe and that the Committee had considered and rejected a legal point raised by Judge Devine of the District of New Hampshire that 28 U.S.C. 109 required retention of court facilities at statutorily designated places of holding court. Upon the recommendation of the Committee the Conference authorized the release of space at these four locations.

AUTHORIZATION OF TEMPORARY PERSONNEL FOR JUDGES

In February 1982 the Director of the Administrative Office advised judges and other court officers and employees of a projected deficiency in the appropriation for "Salaries of Supporting Personnel" and placed severe restrictions on the employment of personnel in clerk's offices, the probation service and other component offices of the courts. In large measure the projected deficiency was due to an increasing demand for temporary law clerks and secretaries by judges and

an increase in the number of overlapping appointments which were costing approximately $2.5 million a year. It was the view of the Committee that many of the requests for temporary employment were fully justified, but that the justification for some requests was either marginal or inadequate.

With regard to overlapping appointments of district judges' secretaries it was the Committee's view that a period of orientation and continuity of service is essential and an overlap for a period of two weeks is justified. The turnover of secretaries is minimal and overlapping appointments would not be a burden on the appropriation. With regard to overlapping appointments of law clerks, however, the Committee believes there is little, if any, justification since most judges have two or more law clerks and continuity of service, as well as the indoctrination of newly appointed law clerks, could be provided by simply staggering the appointments. Those judges who normally appoint law clerks for a two year term could replace a law clerk annually. Those judges who appoint law clerks for a term of only one year could replace one law clerk in July and the other in September.

The Conference upon the recommendation of the Committee amended Item 6 of the Guidelines for the employment of judges' personal staff, approved by the Conference in September 1979 (Conf. Rept. p. 77) to read as follows:

> The Director of the Administrative Office may approve overlapping appointments of secretaries and law clerks of up to two weeks where the turnover of personnel would hinder the continuity of staff support for the judges. As a general rule, overlapping appointments shall not be authorized for judges with two or more secretaries or law clerks.

The Committee recommended and the Conference also adopted the following procedures:

> The Director of the Administrative Office (subject to the recommendation of the chief judge of the court) may authorize the one-time appointment of a temporary secretary or law clerk for a period not to exceed 90 days on the certification of a judge that

he or she has a judicial emergency. The Director may authorize the appointment of a temporary secretary or law clerk for a period in excess of 90 days on the certification of a judge that he or she has a judicial emergency with the concurrence of the chief judge of the involved court, and with the approval of the circuit council, provided that any appointment in excess of 90 days shall be for no longer than an additional 90 days. Such an appointment may be renewed but for not more than 90 days at a time and by the same process, i.e., certification by the judge that the emergency continues and reapproval by both the chief judge of the court and the circuit council.

On behalf of the Committee Judge Hunter submitted the following statement of policy which was approved by the Conference and authorized to be transmitted to all courts:

The appointment of additional secretaries and law clerks for circuit and district judges on a temporary basis is to be discouraged and authorized only in those situations where there is a serious problem amounting to a judicial emergency and where the additional staff support is essential to the operations of the office. Authorization for all presently existing temporary appointments shall expire on December 31, 1982, unless they sooner lapse in the normal course. No such appointment may thereafter be renewed except pursuant to the procedures and requirements specified for appointments for a period in excess of 90 days. Except as provided and justified above, temporary secretaries and law clerks should not be authorized for judges assigned to the Temporary Emergency Court of Appeals, the Judicial Panel on Multi-District Litigation, or for those who are serving on Committees of the Judicial Conference.

COURT REPORTERS

Upon the recommendation of the Committee the Conference approved the retention of an additional court reporter in the Western District of Louisiana on a temporary basis for one year. The Conference also denied a request for

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permission to convert a temporary court reporter in the Northern District of California to a second permanent additional position, but authorized the retention of the incumbent on a temporary basis until a vacancy occurs at which time the temporary position will lapse. The Conference approved a temporary court reporter position in the Southern District of Texas with the understanding that the request for an additional permanent court reporter position will be considered at a later date. A request for an additional court reporter in the District of New Jersey was denied.

CHANGES IN AUTHORIZATION AND COMPENSATION OF SUPPORTING CLERICAL STAFF

Judge Hunter stated that the Committee would reconsider a proposal submitted by Judge Walter Cummings to authorize, on a test basis, higher salaries for personnel in a clerk's office which operates with fewer personnel.

COMMITTEE ON THE BUDGET

Judge Charles Clark, Chairman of the Committee on the Budget, submitted the Committee's report.

APPROPRIATIONS FOR THE FISCAL YEAR 1984

The Conference approved the budget estimates for the fiscal year 1984 prepared by the Director of the Administrative Office and submitted by the Committee. The estimates, exclusive of the Supreme Court, the United States Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center total $869,670,000, an increase of approximately $77,903,000 over the amount recommended by the House Appropriations Committee for the fiscal year 1983, adjusted to reflect proposed supplementals for pay costs and program increases. Of this amount, $39,654,000 is for mandatory or uncontrollable increases such as within grade salary adjustments, promotions, increases in contract rates and charges for equipment, services, and supplies; and the escalation and charges for space rental assessed by the General Services Administration. The proposed increases for program changes which are considered "controllable" total $38,249,000. The Director was authorized

to amend the budget estimates because of new legislation, action taken by the Judicial Conference, or for any other reason the Director and the Budget Committee consider necessary and appropriate.

SUPPORTING PERSONNEL FOR SENIOR JUDGES

Judge Clark advised the Conference that the report of the House Appropriations Subcommittee accompanying the Judiciary Appropriation Bill for the fiscal year 1983 stated that the number of supporting personnel (secretaries and law clerks) authorized for senior judges should be related directly to workload performed and that "the Judicial Councils should not only certify that a senior judge is performing 'substantial judicial duties,' but also should determine the number of supporting positions necessary based on actual workload." Accordingly, the judicial councils of the circuits will be asked to provide this information.

JUDICIAL ETHICS COMMITTEE

Judge Edward A. Tamm, Chairman of the statutory Judicial Ethics Committee, presented the report of the Committee.

ACTIVITIES OF THE COMMITTEE

Judge Tamm informed the Conference that the Committee had received 1,848 financial disclosure reports for the calendar year 1981, including 901 reports from "judicial officers" and 947 reports from "judicial employees". Since January the Committee has also received 29 reports required to be filed by nominees o judgeship positions. All reports submitted to the Committee are being reviewed by at least one Committee member to determine whether they were "filed in a timely manner, are complete and are in proper form," as required by 28 U.S.C.App. 1 306(a).

Judge Tamm informed the Conference that the Committee's volume of correspondence continues to increase. In addition to writing letters to reporting individuals concerning errors appearing on the face of the form, the Committee is now inquiring about inconsistencies between

current reports and those filed in previous years. The Committee also replies to requests for extensions of time to file, acknowledges receipt of reports filed by judicial nominees and notifies individuals who have failed to file in a timely manner. This year the Committee has written a total of 1,200 letters to reporting individuals, many of which continue to involve minor omissions on the face of the form, such as a failure to check a "None" box. The Committee believes that all items on the form should be completed by each reporting individual.

The Conference was informed that two part-time United States magistrates and one employee in the Court of Claims had not yet filed reports for the calendar year 1981. In the absence of filing the Committee, acting in accordance with the procedures previously adopted by the Committee and reported to the Conference in September 1980 (Conf. Rept. p. 76), will consider a reference to the Attorney General under 28 U.S.C.A. App. 1 304(b).

REPORTING FORM AND INSTRUCTIONS

Judge Tamm stated that the Committee had again reviewed the form and instructions for financial disclosure reporting in the light of recent experience and suggestions received by the Committee. As a result of this review the Committee recommended several changes to clarify reporting requirements. To avoid the recurring problem of the failure of reporting individuals to indicate whether their reports include information with respect to the income and assets of their spouse and dependent children, the Committee decided to eliminate the need to check a box and instead to include on the form a statement that the report includes reportable information for the spouse and dependent children, if any. The option of indicating by symbol the ownership of assets by spouses and dependent children, or jointly, has also been eliminated. The disclosure form has also been revised to provide a separate place for reporting capital gains.

Upon the recommendation of the Committee the Conference, in accordance with Section 303(c) of the Ethics in Government Act of 1978, approved the revised financial disclosure reporting form and instructions submitted by the Committee.

ADVISORY COMMITTEE ON CODES OF CONDUCT

Chief Judge Howard T. Markey, Chairman of the Advisory Committee on Codes of Conduct, presented the Committee's report.

ACTIVITIES OF THE COMMITTEE

Judge Markey informed the Conference that since its last report the Committee had received 23 inquiries from persons subject to the various codes of conduct and had issued 20 advisory responses. Judge Markey also informed the Conference that the American Bar Association at its August meeting had adopted an amendment to Canon 3A(7) of the Code of Judicial Conduct that would authorize broadcasting, televising, recording and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto, when approved by a supervising appellate court or other appropriate authority. The American Bar Association also repealed a recent resolution which had urged Congress to bring clubs supported by business within anti-discrimination laws.

APPLICABILITY OF CODES OF CONDUCT

In 1978 the Conference resolved that the Code of Conduct for United States judges be made applicable to the Director of the Administrative Office, the Director of the Federal Judicial Center and the Administrative Assistant to the Chief Justice. Since that time the Conference has approved and promulgated specific codes for particular officers. Incongruities exist in applying a judge's code to those who are not judges. The Committee therefore determined that the present code for Circuit Executives is more appropriate to the activities of the above-named officers. Upon the recommendation of the Committee, the Conference resolved that the Code of Conduct for Circuit Executives, rather than the Code of Conduct for judges, be made applicable to the Director of the Administrative Office, Director of the Federal Judicial Center, and the Administrative Assistant to the Chief Justice.

MODEL CODES OF CONDUCT FOR VARIOUS JUDICIAL EMPLOYEES

The Committee noted that the provision of the Codes of Conduct for clerks and deputy clerks, probation officers, staff attorneys, circuit executives, and law clerks with respect to fund-raising activities is more restrictive than a similar provision relating to judges. The Committee therefore recommended that the Codes of Conduct for clerks, probation officers, staff attorneys, circuit executives, and law clerks be revised by deleting therefrom the words "should not participate in fund-raising activities for such an organization or agency" and substituting therefor the words "he may assist such an organization in raising funds and may participate in their management and investment but should not personally participate in public fund-raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal profession, and the administration of justice."

SENIOR JUDGES SERVING AS ARBITRATORS

The Chief Justice was authorized to appoint an ad hoc committee to explore the prospects of authorizing senior judges to serve as arbitrators.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The written report of the Committee on Intercircuit Assignments, submitted by the Chairman, Judge George L. Hart, Jr., was received by the Conference.

The report indicated that during the period February 16, 1982 through August 15, 1982 the Committee recommended 98 assignments to be undertaken by 78 judges. Of this number one was a retired Supreme Court justice, 14 were senior circuit judges, one was an active circuit judge, 26 were senior circuit judges, 29 were active district judges, two were active judges of the Court of Customs and Patent Appeals, three were active judges of the Court of Claims, two were active judges of the Court of International Trade, and one was an active judge of a bankruptcy court.

Forty-seven judges undertook 50 assignments to the courts of appeals and 46 judges undertook 47 assignments to district courts. In addition one active bankruptcy judge was assigned to a bankruptcy court outside his circuit.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Edward T. Gignoux, Chairman of the Committee on Rules of Practice and Procedure, presented the Committee's report.

BANKRUPTCY RULES

The Conference upon the recommendation of the Committee approved a new set of bankruptcy rules to govern procedure in bankruptcy cases under the new Bankruptcy Code, Title 11, United States Code, and authorized transmission to the Supreme Court for its consideration with a recommendation that the new rules be approved by the Court and transmitted to the Congress pursuant to law. The Conference also authorized the Committee to transmit directly to the Supreme Court any technical amendments to the rules that may be required by legislation enacted by Congress in response to the Northern Pipeline decision. Finally, the Conference approved the official forms submitted by the Committee which are to go into effect simultaneously with the bankruptcy rules and authorized transmission of these forms to the Supreme Court for its information. Hereafter amendments to the forms will be prescribed by the Judicial Conference pursuant to Rule 9009 of the proposed new bankruptcy rules.

CRIMINAL RULES

Upon the recommendation of the Committee, the Conference approved proposed amendments to Rules 6(e) and (g), 11(a), 12.2(b), (c) and (d), 16(a), 23(b), 32(a), (c) and (d), 35(b), and 55; proposed new Rules 11(h), 12(i) and 12.2(e); and the abrogation of Rule 58, Federal Rules of Criminal Procedure, including all official forms previously adopted under Rule 58, and authorized their transmission to the Supreme Court for its consideration with a recommendation

that they be approved by the Court and transmitted to the Congress pursuant to law.

CIVIL RULES

The Committee submitted to the Conference proposed amendments to Rules 6(b), 7(b), 11, 16, 26(a) and (b), 52(a), 53(a), (b) and (c), and 67 of the Federal Rules of Civil Procedure; new Rules 26(g), 53(f), and 72 through 76; and new Official Forms 33 and 34 and recommended their submission to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. Judge Gignoux explained that these proposals are designed to reduce discovery abuse and the abuse of process, to reform the procedures for the conduct of pretrial conferences and for the scheduling and management of litigation by judges, and to conform the rules to the jurisdictional provisions of the Federal Magistrates Act of 1979.

The Conference reviewed the proposed language of Rule 16(b) providing that a United States magistrate may perform duties under the rule "only when specifically authorized by district court rule" and voted to amend the language to read "when authorized by district court rule." The word "specifically" which appeared at a subsequent place in the rule was also deleted and the Committee was authorized to make necessary changes in the Advisory Committee Note. As thus amended, the recommendations of the Committee were approved by the Conference.

APPELLATE RULES

Judge Gignoux informed the Conference that the Chief Justice had appointed Judge Pierce Lively of the Sixth Circuit to succeed Judge Robert A. Ainsworth, Jr., who died last December, as Chairman of the Advisory Committee on Appellate Rules. Judge Lively recently met with the reporter to the Committee to schedule future Committee work.

STATEMENT OF OPERATING PROCEDURES

Judge Gignoux also informed the Conference that the Committee had approved a Statement of Operating Procedures

and would make arrangements to have the statement published in the American Bar Association Journal. A copy of the statement was distributed to the members of the Conference for their information.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

Judge Gerald B. Tjoflat, Chairman of the Committee on the Administration of the Probation System, presented the Committee's report.

SENTENCING INSTITUTES

The Conference upon the recommendation of the Committee authorized the convening of a Joint Institute on Sentencing for the judges of the Fourth and Eleventh Circuits to be held at a location near the Federal Correctional Institution at Butner, North Carolina, April 18-20, 1983. A final agenda, modeled after those of recent Sentencing Institutes, will be presented to the Conference for its consideration at its next session.

SENTENCING REFORM

Judge Tjoflat reviewed the efforts made in the Congress during the last few years to reform sentencing laws through the creation of a Commission on Sentencing, appellate review of sentences, and the creation of comprehensive statutory sentencing procedures. Judge Tjoflat stated that it was the unanimous view of the Committee that, if it be the will of Congress to adopt significant sentencing revision, legislation should be favored that will create simple and inexpensive sentencing procedures that will insure finality of sentence while giving full recognition to the due process rights of convicted defendants. Accordingly, the Committee recommended that the Conference continue to authorize the Committee to monitor the progress of sentencing reform proposals and also communicate past Conference positions to the Congress. This recommendation was approved by the Conference.

The Committee was further authorized to draft legislative alternatives to those already proposed by the Congress for further consideration by the Conference. Included among the alternatives would be the concepts that (1) sentences be imposed under guidelines established by a sentencing committee of the Judicial Conference, (2) sentence review in a court of appeals in conjunction with the review of conviction, and (3) parole decisions based solely on post conviction occurrences.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Judge Robert E. DeMascio, Chairman of the Committee on the Administration of the Bankruptcy System, presented the Committee's report.

SURVEY OF THE NEED FOR BANKRUPTCY JUDGES

Judge DeMascio informed the Conference that pursuant to Sec. 406 of the Bankruptcy Reform Act of 1978 the Director of the Administrative Office had submitted to the Committee a comprehensive report recommending the creation of 299 bankruptcy judgeship positions by April 1, 1984, their regular places of office and additional places of holding court. The Committee reviewed the recommendations of the Director and the recommendations of the judicial councils of the circuits for the creation of 321 bankruptcy judgeships and recommended to the Conference the creation of 300 bankruptcy judgeships.

After full discussion, it was the sense of the Conference that approximately 300 Article I bankruptcy judges would be required in 1984 if the existing bankruptcy court structure is not revised. The Executive Committee of the Conference, upon reconsideration of further recommendations from the Bankruptcy Committee, was authorized to review the variances in recommendations in the light of the discussions in the Conference and, in accordance with the statute, to report its detailed recommendations to the Congress in January 1983 as the recommendations of the Conference.

ARRANGEMENTS FOR BANKRUPTCY JUDGES

The Conference upon the recommendation of the Committee converted seven part-time bankruptcy judge positions to full-time status and changed the regular place of

office of one bankruptcy judge. This action, shown below, is to be effective when appropriated funds are available.

Second Circuit

Eastern District of New York:

(1) Transferred the headquarters of one of the full-time bankruptcy judges at Westbury from Westbury to Hauppauge.

Vermont:

(1) Changed the bankruptcy judge position at Rutland from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

Third Circuit

Delaware:

(1) Changed the bankruptcy judge position at Wilmington from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

Fourth Circuit

Western District of Virginia:

(1) Changed the bankruptcy judge position at Harrisonburg from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

Fifth Circuit

Eastern District of Texas:

(1) Changed the bankruptcy judge position at Tyler from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

Northern District of Texas:

(1) Changed the bankruptcy judge position at Lubbock from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

Seventh Circuit

Western District of Wisconsin:

(1) Changed the bankruptcy judge position at Eau Claire from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

Tenth Circuit

New Mexico:

(1) Changed the bankruptcy judge position at Albuquerque from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.

GUIDELINES FOR CHAPTER 13 ADMINISTRATION

Judge DeMascio reported that the Committee had been concerned over the excessive accummulation of funds by some Chapter XIII trustees in cases administered under the old Bankruptcy Act which are to be used to pay the compensation and expenses of trustees. These funds may not be used to pay the costs of administering cases under the new Bankruptcy Code. It was the view of the Committee that these accounts should be liquidated. Because of the impracticality of locating the debtors in each case from which the excess deductions were made the Committee proposed the following guideline which was approved by the Conference:

> It is the sense of the Conference that the bankruptcy courts shall direct the standing trustees for Chapter XIII cases to deposit in the bankruptcy court registry all funds attributable to Bankruptcy Act cases held for compensation and expense reimbursement over and above the actual allowable

compensation and expenses for such cases for the current accounting year and that these funds ultimately be transferred to the United States Treasury where they will be subject to the claims of the owners.

Judge DeMascio stated that the Committee would give further consideration to a proposal to restrict the acquisition of computer hardware by trustees in Chapter 13 cases.

JURISDICTIONAL CONFLICTS

Judge DeMascio submitted to the Conference a proposed local rule for adoption by the various district courts which is designed to permit a continuation of the processing of bankruptcy cases in the event the Congress fails to enact legislation to remedy defects in the jurisdictional provisions of the Bankruptcy Reform Act of 1978 by October 4, 1982, the date mentioned in the Northern Pipeline case, and the Supreme Court does not extend the date. After a full discussion in which the Chief Justice did not participate, the Conference adopted the following:

Resolved, that the Conference request the Director to provide each circuit with a proposed rule to take effect October 5, 1982 in the absence of congressional action or extension of the stay, which rule will permit the bankruptcy system to continue without disruption in reliance upon jurisdictional grants remaining in the law as limited by Northern Pipeline Construction Co. v. Marathon Pipe Line Co. et al.

BANKRUPTCY APPEALS IN DISTRICT COURTS

Judge DeMascio pointed out that since October 1970 the Administrative Office, under Conference direction, has informed the Judicial Councils of the Circuits of delinquencies in the handling of bankruptcy appeals by district courts by providing regular computer printouts. The Committee recommended that the reporting of this information in its present form be discontinued but that district judges report bankruptcy appeals statistically as cases for the purpose of their reports of cases under advisement and to show

bankruptcy appeals separately in such manner that they can be readily identified. This recommendation was approved by the Conference.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

The report of the Committee on the Administration of the Federal Magistrates System was presented by the Chairman, Judge Otto R. Skopil, Jr.

JURISDICTION OF MAGISTRATES

Judge Skopil advised the Conference that bills have recently been introduced in the Congress either to expand or to contract the jurisdiction of the United States magistrates. Some proposals would grant magistrates "original" jurisdiction over selected categories of civil cases and other proposals would restrict or eliminate the authority of magistrates to conduct certain types of proceedings.

In its report to Congress in December 1981 the Conference expressed its view that the Federal Magistrates System is appropriate as presently constituted, concluding (1) that there should be no further expansion in magistrates jurisdiction at this time and (2) that there should be no retrenchment in the statutory grants authorized by the Federal Magistrates Act as amended in 1976 and 1979.

Anticipating that additional suggestions to expand or contract the jurisdiction of magistrates will continue to recur in the Congress from time to time, the Committee proposed the following resolution which was approved by the Conference:

> Resolved, that it continues to be the position of the Judicial Conference of the United States that the Federal Magistrates System should continue to be an integral part of the district courts, that the jurisdiction of magistrates should remain "open" and should neither be expanded to include "original" jurisdiction in special categories of cases, nor restricted in special types of cases or proceedings. It is, furthermore, the policy of the Judicial

Conference to encourage the full and effective utilization of United States magistrates by the district courts in civil and criminal cases under existing statutory authority and to oppose restrictions on the utilization of magistrates by the district courts.

QUALIFICATION STANDARDS AND SELECTION PROCEDURES

The Federal Magistrates Act of 1979 amended 28 U.S.C. 631(b) to require that magistrates at the time of their appointment have at least five years' membership in the bar of the particular state in which the magistrate is to serve. Recently an experienced attorney was found to be disqualified from appointment as a magistrate solely because he had not been a member of the pertinent state bar for five years, although he was currently a member in good standing of that bar and had served with the Department of Justice and been a member of the bar of another state for 16 years.

On August 6, 1982 the President signed Public Law 97-230 amending section 631(b) to permit membership in the bar of any state to satisfy the five-year requirement. The requirement for membership in the particular bar of the state in which the magistrate is to serve was unchanged by the amendment.

Prior to the meeting of the Conference, the Executive Committee implemented the new statute by approving a conforming amendment to section 1.01 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment of United States Magistrates. At the request of Judge Skopil, the Conference ratified the action of its Executive Committee.

The amended regulation provides in part as follows:

> Sec. 1.01 Minimum Qualifications
>
> To be qualified for appointment as a United States magistrate, nominees must meet the following standards:

(a) They must be members in good standing of the bar of the highest court of the state in which the person selected is to serve...

(b) They must have been engaged in the active practice of law for a period of at least five years...

CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated, these changes are to become effective when appropriated funds are available. The salaries of full-time magistrate positions are to be determined in accordance with the salary plan previously adopted by the Conference.

FIRST CIRCUIT

Maine:

(1) Continued the part-time magistrate position at Bangor for an additional four year term at the currently authorized salary of $2,700 per annum.

Massachusetts:

(1) Converted the part-time magistrate position at Springfield to a full-time magistrate position.

New Hampshire:

(1) Converted the combination clerk of court-magistrate position at Concord to a full-time magistrate position.

SECOND CIRCUIT

New York, Eastern:

(1) Continued the part-time magistrate position at Patchogue for an additional four year term at the currently authorized salary of $4,500 per annum.

New York, Southern:

(1) Continued the part-time magistrate position at Poughkeepsie for an additional four year term at the currently authorized salary of $10,000 per annum.

THIRD CIRCUIT

Pennsylvania, Eastern:

(1) Continued the full-time magistrate position at Philadelphia which is due to expire on December 10, 1982 for an additional eight year term.

(2) Continued the part-time magistrate position at Reading for an additional four year term.

(3) Reduced the salary of the part-time magistrate position at Reading from $4,500 per annum to $3,600 per annum.

(4) Continued the part-time magistrate position at Allentown for an additional four year term at the currently authorized salary of $3,600 per annum.

Pennsylvania, Middle:

(1) Continued the part-time magistrate position at Williamsport for an additional four year term at the currently authorized salary of $3,600 per annum.

(2) Continued the part-time magistrate position at Stroudsburg for an additional four year term.

(3) Increased the salary of the part-time magistrate position at Stroudsburg from $1,800 per annum to $2,700 per annum.

FOURTH CIRCUIT

North Carolina, Western:

(1) Converted the combination deputy clerk-magistrate position at Charlotte to a part-time magistrate position at a salary of $29,250 per annum.

(2) Authorized the full-time magistrate at Asheville to exercise jurisdiction in the adjoining Eastern District of Tennessee.

(3) Discontinued the part-time magistrate position at Bryson City.

West Virginia, Northern:

(1) Continued the part-time magistrate position at Martinsburg for an additional four year term at the currently authorized salary of $900 per annum.

West Virginia, Southern:

(1) Discontinued the part-time magistrate position at Logan upon the expiration of the current term of office of the incumbent.

FIFTH CIRCUIT

Louisiana, Western:

(1) Continued the part-time magistrate at Alexandria for an additional four year term.

(2) Increased the salary of the part-time magistrate position at Alexandria from $26,750 per annum to $29,250 per annum.

(3) Continued the part-time magistrate position at Lake Charles for an additional four year term.

(4) Reduced the salary of the part-time magistrate position at Lake Charles from $26,750 to $17,900 per annum.

(5) Continued the part-time magistrate position at Monroe for an additional four year term.

(6) Reduced the salary of the part-time magistrate position at Monroe from $3,600 per annum to $1,800 per annum.

(7) Discontinued the part-time magistrate position at Leesville.

Mississippi, Northern:

(1) Continued the full-time magistrate position at Greenville for an additional eight year term.

Mississippi, Southern:

(1) Continued the full-time magistrate position at Biloxi (or Gulfport) for an additional eight year term.

(2) Continued the full-time magistrate position at Jackson for an additional eight year term.

(3) Authorized the appointment of an additional full-time magistrate at Biloxi (or Gulfport or Jackson).

Texas, Northern:

(1) Continued the authority for the bankruptcy judge at Lubbock to perform the duties of a magistrate for an additional four year period.

(2) Increased the compensation of the incumbent bankruptcy judge-magistrate at Lubbock from $26,750 per annum to $29,250 per annum for the performance of magistrate duties.

(3) Continued the full-time magistrate position at Fort Worth for an additional eight year term.

(4) Continued the part-time magistrate position at Amarillo for an additional four year term at the currently authorized salary of $4,500 per annum.

(5) Continued the part-time magistrate position at San Angelo for an additional four year term at the currently authorized salary of $900 per annum.

Texas, Western:

(1) Continued the part-time magistrate position at Waco for an additional four year term.

(2) Increased the salary of the part-time magistrate position at Waco from $26,750 per annum to $29,250 per annum.

(3) Continued the part-time magistrate position at Pecos for an additional four year term at the currently authorized salary of $26,750 per annum.

(4) Continued the part-time magistrate position at Eagle Pass for an additional four year term.

(5) Increased the salary of the part-time magistrate position at Eagle Pass from $17,900 per annum to $20,300 per annum.

(6) Continued the part-time magistrate position at Midland (or Odessa) for an additional four year term.

(7) Decreased the salary of the part-time magistrate position at Midland (or Odessa) from $15,500 per annum to $8,200 per annum, effective October 1, 1982.

(8) Continued the part-time magistrate position at Big Bend National Park for an additional four year term at the currently authorized salary of $11,800 per annum.

SIXTH CIRCUIT

Kentucky, Western:

(1) Continued the part-time magistrate position at Hopkinsville for an additional four year term.

(2) Increased the salary of the part-time magistrate position at Hopkinsville from $26,750 per annum to $29,250 per annum.

(3) Continued the part-time magistrate position at Bowling Green for an additional four year term.

(4) Reduced the salary of the part-time magistrate position at Bowling Green from $4,500 per annum to $3,600 per annum.

(5) Continued the part-time magistrate position at Owensboro for an additional four year term at the currently authorized salary of $3,600 per annum.

(6) Continued the authority for the deputy clerk at Louisville to perform the duties of a magistrate for an additional four-year term without additional compensation.

Michigan, Eastern:

(1) Authorized a sixth full-time magistrate position at Detroit.

(2) Increased the compensation of the bankruptcy judge at Bay City for the performance of magistrate duties from $26,750 per annum to $29,250 per annum.

(3) Authorized the appointment of a part-time magistrate at Bay City at a salary of $29,250 per annum in lieu of the combination bankruptcy judge-magistrate position at that location at such time as the court deems appropriate.

Ohio, Southern:

(1) Continued the part-time magistrate position at Portsmouth for an additional four year term at the currently authorized salary of $900 per annum.

(2) Continued the part-time magistrate position at Steubenville for an additional four year term at the currently authorized salary of $900 per annum.

(3) Discontinued the part-time magistrate position at Zanesville upon the expiration of the current term of office of the incumbent.

Tennessee, Eastern:

(1) Established a new part-time magistrate position at Gatlinburg (or Sevierville) at a salary of $6,400 per annum.

(2) Authorized the part-time magistrate at Gatlinburg (or Sevierville) to serve in the adjoining Western District of North Carolina.

(3) Continued the part-time magistrate position at Greeneville for an additional four year term.

(4) Reduced the salary of the part-time magistrate position at Greeneville from $4,500 per annum to $2,700 per annum.

(5) Discontinued the part-time magistrate position at Winchester upon the expiration of the current term of the incumbent.

SEVENTH CIRCUIT

Illinois, Central:

(1) Increased the aggregate compensation of the combination clerk-magistrate position at Peoria to that of a clerk of a large district court.

Illinois, Southern:

(1) Continued the full-time magistrate position at Benton for an additional eight year term of office.

Wisconsin, Eastern:

(1) Continued the part-time magistrate position at Green Bay for an additional four year term at the currently authorized salary of $900 per annum.

(2) Continued the part-time magistrate position at Appleton for an additional four year term at the currently authorized salary of $900 per annum.

EIGHTH CIRCUIT

Arkansas, Eastern:

(1) Continued the part-time magistrate position at West Memphis for an additional four year term at the currently authorized salary of $1,800 per annum.

Arkansas, Western:

(1) Continued the part-time magistrate position at Hot Springs for an additional four year term at the currently authorized salary of $6,400 per annum.

(2) Continued the part-time magistrate position at Harrison for an additional four year term.

(3) Increased the salary of the part-time magistrate position at Harrison from $3,600 per annum to $29,250 per annum from October 1, 1982 to January 31, 1983 (with the salary to revert to the $3,600 level on February 1, 1983).

(4) Continued the part-time magistrate position at El Dorado for an additional four year term at the currently authorized salary of $2,700 per annum.

Iowa, Northern:

(1) Continued the part-time magistrate position at Dubuque for an additional four year term at the currently authorized salary of $900 per annum.

Iowa, Southern:

(1) Continued the full-time magistrate position at Des Moines for an additional eight year term.

Minnesota:

(1) Continued the authority for the bankruptcy judge at Duluth to perform the duties of a magistrate for an additional four year period.

(2) Increased the compensation paid to the bankruptcy judge at Duluth for the performance of magistrate duties from $26,750 per annum to $29,250 per annum.

South Dakota:

(1) Continued the part-time magistrate position at Aberdeen for an additional four year term at the currently authorized salary of $2,700 per annum.

NINTH CIRCUIT

Alaska:

(1) Continued the part-time magistrate position at Juneau for an additional four year term at the currently authorized salary of $900 per annum.

(2) Continued the part-time magistrate position at Ketchikan for an additional four year term at the currently authorized salary of $900 per annum.

California, Northern:

(1) Continued the part-time magistrate position at Oakland for an additional four year term.

(2) Increased the salary of the part-time magistrate position at Oakland from $26,750 per annum to $29,250 per annum.

(3) Continued the part-time magistrate position at San Jose for an additional four year term at the currently authorized salary of $15,500 per annum.

(4) Continued the part-time magistrate position at Eureka for an additional four year term at the currently authorized salary of $900 per annum.

California, Eastern:

(1) Continued the full-time magistrate position at Yosemite National Park for an additional eight year term.

(2) Increased the salary of the full-time magistrate position at Yosemite National Park from $35,894 per annum to $38,025 per annum.

(3) Continued the part-time magistrate position at Alturas for an additional four year term at the currently authorized salary of $900 per annum.

(4) Continued the part-time magistrate position at Bakersfield for an additional four year term at the currently authorized salary of $8,200 per annum.

(5) Continued the part-time magistrate position at Bishop for an additional four year term at the currently authorized salary of $6,400 per annum.

(6) Continued the part-time magistrate position at Merced for an additional four year term at the currently authorized salary of $4,500 per annum.

(7) Continued the part-time magistrate position at Sequoia and Kings Canyon National Parks for an additional four year term at the currently authorized salary of $15,500 per annum.

(8) Continued the part-time magistrate position at Yreka for an additional four year term.

(9) Increased the salary of the part-time magistrate position at Yreka from $900 to $2,700 per annum.

California, Central:

(1) Continued the part-time magistrate position at San Bernardino for an additional four year term.

(2) Reduced the salary of the part-time magistrate position at San Bernardino from $20,300 to $15,500 per annum.

(3) Continued the part-time magistrate position at Long Beach for an additional four year term.

(4) Reduced the salary of the part-time magistrate position at Long Beach from $13,600 per annum to $10,000 per annum.

(5) Continued the part-time magistrate position at Twentynine Palms for an additional four year term at the currently authorized salary of $4,500 per annum.

(6) Continued the part-time magistrate position at Lancaster for an additional four year term.

(7) Increased the salary of the part-time magistrate position at Lancaster from $3,600 per annum to $8,200 per annum.

Hawaii:

(1) Continued the full-time magistrate position at Honolulu for an additional eight year term.

(2) Increased the salary of the part-time magistrate position at Honolulu from $8,200 per annum to $15,500 per annum.

(3) Continued the part-time magistrate position at Hilo for an additional four year term at the currently authorized salary of $1,800 per annum.

(4) Continued the part-time magistrate position at Lihue for an additional four year term at the currently authorized salary of $900 per annum.

(5) Continued the part-time magistrate position at Wailuku for an additional four year term at the currently authorized salary of $900 per annum.

Idaho:

(1) Continued the part-time magistrate position at Twin Falls for an additional four year term at the currently authorized salary of $1,800 per annum.

Washington, Eastern:

(1) Continued the part-time magistrate position at Yakima for an additional four year term at the currently authorized salary of $15,500 per annum.

Washington, Western:

(1) Continued the part-time magistrate position at Olympic National Park for an additional four year term.

(2) Increased the salary of the part-time magistrate position at Olympic National Park from $10,000 per annum to $13,600 per annum.

(3) Continued the part-time magistrate position at Bellingham for an additional four year term.

(4) Reduced the salary of the part-time magistrate position at Bellingham from $6,400 per annum to $3,600 per annum.

(5) Continued the part-time magistrate position at Vancouver for an additional four year term at the currently authorized salary of $3,600 per annum.

TENTH CIRCUIT

Oklahoma, Northern:

(1) Continued the part-time magistrate position at Miami for an additional four year term at the currently authorized salary of $4,500 per annum.

Oklahoma, Eastern:

(1) Continued the part-time magistrate position at Hugo for an additional four year term at the currently authorized salary of $1,800 per annum.

Oklahoma, Western:

(1) Continued the part-time magistrate position at Lawton for an additional four year term.

(2) Increased the salary of the part-time magistrate position at Lawton from $26,750 per annum to $29,250 per annum.

Utah:

(1) Authorized the clerk of court at Salt Lake City to perform the duties of a part-time magistrate for an additional four year term without additional compensation.

(2) Continued the part-time magistate position at Cedar City for an additional four year term.

(3) Reduced the salary of the part-time magistrate position at Cedar City from $4,500 per annum to $1,800 per annum.

(4) Continued the part-time magistrate position at Monticello (or Moab) for an additional four year term.

(5) Reduced the salary of the part-time magistrate position at Monticello (or Moab) from $2,700 per annum to $1,800 per annum upon the expiration of the current term of the incumbent.

(6) Continued the part-time magistrate position at Vernal (or Roosevelt) for an additional four year term.

(7) Reduced the salary of the part-time magistrate position at Vernal (or Roosevelt) from $2,700 per annum to $1,800 per annum upon the expiration of the current term of the incumbent.

ELEVENTH CIRCUIT

Florida, Northern:

(1) Continued the full-time magistrate position at Pensacola for an additional eight year term.

(2) Continued the part-time magistrate position at Tallahassee for an additional four year term.

(3) Increased the salary of the part-time magistrate position at Tallahassee from $17,900 per annum to $20,300 per annum.

(4) Continued the part-time magistrate position at Panama City for an additional four year term at the currently authorized salary of $10,000 per annum.

Florida, Southern:

(1) Continued the full-time magistrate position at Miami which is due to expire on September 11, 1983 for an additional eight year term.

(2) Authorized a fifth full-time magistrate position to serve at Miami.

(3) Continued the part-time magistrate position at Fort Pierce for an additional four year term at the currently authorized salary of $2,700 per annum.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Judge Thomas J. MacBride, Chairman of the Committee to Implement the Criminal Justice Act, presented the Committee's report.

APPOINTMENTS AND PAYMENTS

Judge MacBride submitted to the Conference a report on appointments and payments under the Criminal Justice Act for the six-month period ending March 31, 1982. The report indicated that Congress had appropriated $26,500,000 for "defender services" during the fiscal year and that a surplus of $2,000,000 had been carried forward into the fiscal year 1982. Projected obligations for the year are $30,670,000. A supplemental appropriation in the amount of $2,170,000 has been approved.

During the first half of the fiscal year 1982 there were 19,400 persons represented under the Criminal Justice Act compared to 21,200 represented in the first half of the fiscal year 1981, a decrease of 8.5 percent. Of this number 10,805 or 56 percent were represented by Federal Public and Community Defender Organizations.

BUDGET REQUESTS -- FEDERAL PUBLIC DEFENDERS

The Criminal Justice Act, as amended, requires each Federal Public Defender Organization, established pursuant to 18 U.S.C. 3006A(h)(2)(A), to submit a proposed budget to be approved by the Judicial Conference in accordance with 28 U.S.C. 605. The Conference, upon the recommendation of the Committee, approved budget requests for the fiscal year 1984 for Federal Public Defender Organizations as follows:

Arizona	$	812,757
California, Northern	$	827,304
California, Eastern	$	694,337
California, Central	$	1,617,667
Colorado	$	335,820
Connecticut	$	310,539
Florida, Northern	$	215,380
Florida, Middle	$	519,205
Florida, Southern	$	748,868
Georgia, Southern	$	270,826
Hawaii	$	261,512
Illinois, Central & Southern	$	168,677
Kansas	$	300,404
Kentucky, Eastern	$	278,242
Louisiana, Eastern	$	307,585
Maryland	$	626,591
Massachusetts	$	288,142
Minnesota	$	194,371
Missouri, Western	$	487,567
Nevada	$	351,958
New Jersey	$	643,390
New Mexico	$	273,543
Ohio, Northern	$	284,590
Pennsylvania, Western	$	294,899
Puerto Rico	$	321,765
South Caroline	$	287,639
Tennessee, Middle	$	238,983
Tennessee, Western	$	182,103
Texas, Southern	$	593,767
Texas, Western	$	586,968
Virgin Islands	$	399,442
Washington, Western	$	383,523
West Virginia, Southern	$	159,976
TOTAL	$	14,268,346

Judge MacBride stated that the Federal Public Defender offices in the Districts of Connecticut and Maryland had requested supplemental funding for the fiscal year 1983 for increases in personnel staffing and resulting expenses. It was the view of the Committee, however, that in any district court in which the average cost per case for representation provided by private attorneys is substantially less than the cost per case for representation provided by the Federal defender, and there is no indication that the court is experiencing difficulty in obtaining qualified private attorneys to appoint under the Criminal Justice Act, increases in the personnel staff of the Federal defender should not, at the present time, be authorized.

GRANT REQUESTS — COMMUNITY DEFENDER ORGANIZATIONS

The Conference approved sustaining grants for the fiscal year 1984 for six of the seven Community Defender Organizations as follows:

Federal Defenders of San Diego, Inc San Diego, Calif.	$1,118,730
Federal Defender Program, Inc., Atlanta Georgia	$ 375,025
Federal Defender Program, Inc., Chicago, Illinois	$ 628,554
Federal Defender Division, Legal Aid and Defender Association of Detroit, Michigan.	$ 708,577
Federal Defender Services Unit, Legal Aid Society, New York, New York	$1,537,102
Defender Association of Philadelphia, Philadelphia, Pa.	$ 517,464
TOTAL	$4,880,452

The Conference upon the recommendation of the Committee deferred consideration of the funding level for the Community Defender Organization in the District of Oregon due to the uncertainty of the continuation of the Eugene branch office of that organization and the cost savings which would be associated with its disestablishment. For the same reason the Conference also, on recommendation of the Committee, denied supplemental funding for the fiscal year 1983.

FUNDING FOR THE FEDERAL PUBLIC DEFENDER IN THE SOUTHERN DISTRICT OF FLORIDA

Judge MacBride informed the Conference that the Attorney General of the United States had recently submitted a request to the Congress for funds to increase the staff of the United States Attorney's Office in the Southern District of Florida. In response to the Vice President's Task Force on Crime in Southern Florida several law enforcement agencies increased their staffs substantially in the past year. The Administrative Office has estimated that the augmentation of the United States Attorney's Office to the degree requested by the Attorney General would result in the filing of an additional 800 cases annually in the Southern District of Florida that would require the appointment of counsel under the Criminal Justice Act.

Upon the recommendation of the Committee the Conference thereupon approved contingent budget authority in the amount of $500,465 for the Federal Public Defender office in the Southern District of Florida for the fiscal year 1984. If needed, these funds would be used to establish branch offices in Fort Lauderdale and West Palm Beach and augment the staff of the Federal Public Defender by the addition of seven assistant public defenders, two investigators, one paralegal specialist and five secretarial or clerical supporting personnel. The Conference directed that these additional funds not be used until there has been a significant increase in the caseload and workload in the district to a level justifying the increased resources and that any additional attorney positions be filled by the Public Defender only with the approval of the Court of Appeals for the Eleventh Circuit.

GUIDELINES

Judge MacBride informed the Conference that a number of judicial officers were issuing orders nunc pro tunc ratifying or giving retroactive authorization for investigative, expert, or other services under subsection (e) of the Criminal Justice Act when the amount of payment for services exceeded $150 and prior authorization had not been secured. The Act provides that the total cost of services obtained without prior authorization may not exceed $150 plus expenses reasonably incurred. While the Committee was sympathetic with the desire to achieve flexibility in the administration of the Act, it was of the opinion that the existing language of Subsecton (e)(2) of the Act cannot be read to authorize any payment of compensation in excess of $150 in the absence of actual prior authorization from the court. It was pointed out that Paragraph 3.02B of the Guidelines for the Administration of the Criminal Justice Act does not sufficently express the statutory prohibition against payments in excess of $150 in situtations in which prior authorization for services was not actually obtained. Upon the recommendation of the Committee the Conference amended the Guideline to read as follows:

> 3.02B. Subsection (e)(2) of the Act prohibits any payment of compensation in excess of $150 for investigative, expert, or other services unless actual prior authorization from the court for such services is obtained. Nothing in the Act can be construed to authorize a waiver of this limitation, nor to authorize the issuance of an order ratifying or retroactively authorizing the obtaining of such services where the cost exceeds $150.

Judge MacBride stated that the Committee will consider proposing an amendment to the Criminal Justice Act to deal with this problem.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge Alexander Harvey, II, Chairman of the Committee on the Administration of the Criminal Law, presented the Committee's report.

INTERLOCUTORY APPEALS

The Committee submitted a draft bill to amend Sec. 1291 of Title 28, United States Code, to withdraw jurisdiction from the courts of appeals to consider appeals, prior to final judgment, from the denial of motions to dismiss indictments. The Conference after full discussion referred the proposal back to the Committee for further study.

SEALING OF RECORDS UNDER THE YOUTH CORRECTIONS ACT

The Criminal Code, 18 U.S.C. 5021, provides for the setting aside of the conviction of a youth offender who has been unconditionally discharged from probation or from incarceration prior to the expiration of the prescribed term and for the issuance of a certificate to that effect. The Committee pointed out that since 1978 there has been a growing trend in the decisional law to read into the Youth Corrections Act an intention to seal the criminal record when a conviction has been set aside under the statute. In addition, at least one court has ruled that a youth whose conviction has been set aside under the Act may respond in the negative to any question regarding his conviction. To implement the views of the courts who have thus interpreted the Youth Corrections Act the Committee submitted a proposed model order with the recommendation that the Conference approve this order for the optional use of district courts in accordance with the decisional law of their respective circuits.

After full discussion the Conference voted to approve that portion of the model order providing for the sealing of records, but disapproved the provision permitting a youth to deny that he was ever convicted.

AMENDMENT TO THE SMUGGLING STATUTE

The Committee submitted to the Conference a proposed amendment to 18 U.S.C. 545, relating to smuggling goods into the United States. The proposed amendment is in response to the case of United States v. Lespier, 601 F.2d 22 (1st Cir. 1979), which overturned a conviction involving the interception of a vessel within the territorial waters of the United States

which was carrying cargo for which no invoice existed. The court of appeals held that the offense of smuggling is not committed until the merchandise is actually landed on shore. The proposed amendment to 18 U.S.C. 545 would make it unlawful to "transport with intent" to smuggle merchandise into the United States. The Conference upon the recommendation of the Committee approved the draft bill and authorized its transmission to the Congress.

COMMITMENT OF MENTALLY INCOMPETENT OFFENDERS

The Conference had previously recommended legislation providing that the standard of proof for a finding of "dangerousness" at the time of a commitment hearing following the acquittal of a defendant on grounds of insanity should be a "preponderance of the evidence." A recommendation of the Committee that the proposal be changed to require a "clear and convincing" standard of proof in commitment hearings was disapproved by the Conference.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge T. Emmet Clarie, Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

JUDGES' MANUAL FOR THE MANAGEMENT OF COMPLEX CRIMINAL JURY CASES

Judge Clarie submitted to the Conference a Manual on Complex Criminal Jury Cases which had been prepared by a Subcommittee consisting of members of the Jury Committee and the Committee on the Administration of the Criminal Law. The Manual is intended as a practical guide for trial judges in organizing the progress of the complicated criminal case. The organization of the Manual follows the various stages of a criminal case from the filing of pre-indictment motions through the conduct of the trial, including sections on jury management and the regulation of prejudicial publicity as it affects jury selection. Upon the recommendation of the Committee the Conference authorized the Director of the

Administrative Office to distribute a copy of the Manual to every district judge.

PERIODIC REPORTING — JURY SELECTION

At the Conference session in March 1982 (Conf. Rept. p. 41) the Committee recommended that the clerks of the district courts continue to collect statistical information to determine whether jury wheels comply with the randomness and nondiscrimination provisions of 28 U.S.C. 1861 and 1862 but that the clerks of court no longer be required to report that information to the Administrative Office. The Committee at that time noted that the responsibility for complying with the requirements of the Jury Act remains with the district court and that the judicial councils of the circuits should exercise oversight responsibility. The Conference, however, asked the Committee to consider whether a clerk of a district court can discharge the court's responsibility to compile requisite statistical information.

Judge Clarie informed the Conference that the Committee had again considered this recommendation and continued to be of the view that the process of analyzing this statistical information should be decentralized and performed in the courts themselves. He assured the Conference that the analysis would not be highly technical and that the Committee had been reassurred that clerks of district courts have the capacity to perform this function under the procedures and instructions to be provided to them by the Administrative Office. The computation process required of the clerks appears easily manageable and not mathematically sophisticated. Upon the recommendation of the Committee, the Conference revised the regulations to require district courts upon the refilling of jury wheels to make a random sample of returned questionnaires to determine whether the jury wheels comply with the provisions of the Jury Act and to require the analysis to be performed locally by the clerk of the district court under the directions of the Administrative Office.

VOIR DIRE EXAMINATION

The Conference in March 1982 (Conf. Rept. p. 41) voted to express its opposition to S. 1532, 97th Congress, which would amend Rule 24(a), Federal Rules of Criminal Procedure,

and Rule 47(a), Federal Rules of Civil Procedure, to permit the parties or their attorneys to conduct the voir dire examination of prospective petit jurors. Judge Clarie informed the Conference that the Senate Judiciary Subcommittee on Courts had subsequently amended this bill to require an opportunity for the parties or their attorneys to conduct an oral examination of jurors, but in civil cases to permit judges in their discretion to limit attorney questioning except that each side would have to be allowed at least 30 minutes for such examination with an additional 10 minutes for multiple parties, not to exceed one hour per side. In criminal cases no definition would be made by this amendment of the "reasonable limitations" which the court would be authorized to impose upon attorney questioning. The Committee did not believe this amendment to be meritorious and recommended that the Conference oppose this amended version of the bill. This recommendation was approved by the Conference.

WITNESSES BEFORE GRAND JURIES

The Conference in March 1982 (Conf. Rept. p. 40) expressed its opposition to H.R. 4272, 97th Congress, which is a bill to provide for the assistance of counsel for witnesses appearing before grand juries and to authorize the court to appoint and compensate counsel for any person subpoened to appear before a grand jury who is financially unable to obtain counsel. Judge Clarie informed the Conference that three additional bills on this same subject, H.R. 5815, H.R. 5816, and H.R. 5817, 97th Congress, had been introduced in the House of Representatives. These bills deal with the assistance of counsel for grand jury witnesses, the subpoena and notification of witnesses of their rights, and the treatment of recalcitrant witnesses. In addition, one of the bills would require that the court dismiss an indictment in advance of trial which is found on the basis of the record of grand jury proceedings not to be supported by evidence admissable at trial. Upon the recommendation of the Committee the Conference voted to recommend against the enactment of any of these bills.

TAX TREATMENT OF JURORS' ATTENDANCE FEES

H.R. 6772, 97th Congress, is a bill to amend the Internal Revenue Code to allow an individual's spouse to receive the usual fee for service as a juror without losing eligibility for

certain retirement savings provisions relating to non-working spouses. The bill was introduced to alleviate a ruling of the Internal Revenue Service which might be adverse to the interests of federal jurors. Section 219(c) of the Internal Revenue Code creates a special rule for married individuals filing a joint return whereby a deduction is allowed for payments to an individual retirement account established for the benefit of a spouse who has had no compensation during the tax year. Since the receipt of the $30 juror attendance fee has been defined as the receipt of "compensation", a non-working spouse serving as a juror may lose a valuable benefit under the tax laws. Because this interpretation of the law would appear to penalize the performance of jury duty and to discourage willing compliance with the summons to serve, the Committee recommended that the Conference record its support of H.R. 6772 as a matter of fairness in restoring to jurors what could be a valuable benefit under the income tax laws. This recommendation was approved by the Conference.

JUROR QUALIFICATION QUESTIONNAIRE

Judge Clarie stated that the Judicial Conference is required by 28 U.S.C. 1869(h) to approve the juror qualification form used by the United States district courts to ascertain the qualification of persons whose names have been selected from the master jury wheels for prospective jury service. The form is distributed by mail to these prospective jurors. Recently the Postal Service amended its regulations to increase the first-class postage rate for items having the size of the current juror questionnaire form. To conserve funds the Administrative Office proposed minor alterations to the format of this form to bring its dimensions within a less expensive postal classification as well as making it more readable and understandable by prospective jurors. Upon the recommendation of the Committee the Conference approved the revised version of the juror qualification form submitted by the Committee.

IMPLEMENTATION COMMITTEE ON ADMISSION OF ATTORNEYS TO FEDERAL PRACTICE

The written report of the Implementation Committee on the Admission of Attorneys to Federal Practice, of which Judge James Lawrence King is Chairman, was received by the Conference.

The Committee reported that the 14 district courts participating in the pilot program of federal attorney admissions standards were making satisfactory progress. More than half of the participating courts have now successfully implemented their new admission rules. The remaining districts indicate that substantial work has been done toward achieving that end. It has become clear to the Committee that several courts in the program cannot absorb the work of developing this program and the additional work which will inevitably be required to implement any new rules and policies imposing standards upon the admission of attorneys to practice.

The report also indicated that the Committee with the assistance of the Federal Judicial Center had conducted a productive meeting in April 1982 which brought together for discussion the chief judge or other overseeing judge and a bar representative from each district court participating in the pilot program.

COMMITTEE ON PACIFIC TERRITORIES

Judge Anthony M. Kennedy, Chairman of the Committee on Pacific Territories, presented the report of the Committee.

The Committee recommended that the Conference continue to support legislation to permit the United States Court of Appeals for the Ninth Circuit to review local law cases arising in Guam and the Northern Mariana Islands by certiorari rather than by appeal, but reserve comment, pending further study, on the proposal to empower the local courts in these territories to render final decisions on local law questions. The Committee also recommended that the Conference renew its support of legislation to make express provision for jurisdiction in the district courts of the Pacific Territories in diversity types of cases. These recommendations were approved by the Conference.

COMMITTEE ON JUDGESHIP VACANCIES

Judge Wilfred Feinberg, Chairman of the Committee on Judgeship Vacancies, presented the Committee's recommendation that the Conference authorize the Chief

Justice, or his designated representative, to release at the close of each Judicial Conference session a list of all existing judicial vacancies, along with such information as the length of time that each vacancy has been in existence and the current public status of the appointment. It was the view of the Committee that this procedure might assist to expedite the filling of vacancies. The recommendation was approved by the Conference.

The Conference also approved the recommendation of the Committee that it be discharged and that the appropriate Conference Committee consider suggestions for dealing with vacancy problems, such as a Speedy Judicial Appointments Act or the creation of "floater" judgeship positions.

AD HOC COMMITTEE ON THE DISPOSITION OF COURT RECORDS

Judge Walter J. Cummings, Chairman of the Ad Hoc Committee on the Disposition of Court Records, presented the report of the Committee.

RECORDS DISPOSITION PROGRAM AND SCHEDULE

The Conference in March 1980 (Conf. Rept. p. 55) approved a Records Disposition program and Records Disposition schedules for the records of the various United States courts exclusive of the Supreme Court. After the schedules were formally issued in June 1980 several problems arose concerning retention periods, the procedures for retiring records to records centers and the need to establish schedules for records not covered. In December 1980 in response to these concerns the National Archives and Records Service placed a moratorium on the destruction of court records until these problems could be addressed. At its session in March 1981 (Conf. Rept. p. 12) the Conference authorized the Chief Justice to reactivate the Ad Hoc Committee on the Disposition of Court Records for the purpose of considering modifications to the schedules to resolve outstanding problems.

Judge Cummings informed the Conference that the reactivated Ad Hoc Committee had met on three difference occasions, had received recommendations from the Archivist of the United States and members of his staff, from a

committee of the Federal Court Clerks' Association, and from members of the staff of the Administrative Office. Furthermore, the Committee had received comments from various judges and court officers on a revised records disposition schedule which had been distributed for comment in April 1982. On the basis of its further study the Committee submitted to the Conference a proposed records disposition program and schedule covering the records of the various United States courts, other than the Supreme Court, and recommended that the disposition schedule and program statement be approved by the Conference as submitted and that the Conference authorize its transmission to the National Archives and Records Service and to the courts concerned. This recommendation was approved by the Conference.

TERMINATION OF THE WORK OF THE COMMITTEE

Judge Cummings stated that the work of the Committee in preparing revised schedules for the disposition of the records of the various United States courts had now been completed. The Conference thereupon discharged the Committee from any further responsibilities, and commended the Chairman and members of the Committee for their work. The Conference directed that future modifications in the disposition schedules be considered by the appropriate committee of the Conference.

ELECTIONS

The Conference in March 1982 (Conf. Rept. p. 48) authorized the Executive Committee to select a district judge to serve as a member of the Board of the Federal Judicial Center for a term of four years succeeding Judge Aubrey E. Robinson, Jr., whose term expired on March 28, 1982. Pursuant to 28 U.S.C. 621(a)(2), the Executive Committee selected Judge Warren Urbom of the District of Nebraska to succeed Judge Aubrey E. Robinson, Jr., on the Board of the Federal Judicial Center.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

Judge Clement F. Haynsworth, Jr., Chairman of the newly-appointed Committee to Review Circuit Council Conduct and Disability Orders, reported that the Committee had made a preliminary review of the need for procedures to be followed by the Committee, but had adopted no rules as yet. In this regard he solicited suggestions from members of the Conference. The Committee has denied petitions for review in four of the five petitions thus far received. The record in the fifth case is not yet complete.

The Judicial Council Reform and Judicial Conduct and Disability Act of 1980, P.L. 96-458, requires the Director of the Administrative Office to include in his Annual Report a summary of the number of complaints filed with each Judicial Council pursuant to Sec. 371(c) of Title 28, United States Code, indicating the general nature of the complaints and the disposition of those complaints in which action has been taken. To enable the Director to fulfill his reporting obligations under this new law the Executive Committee of the Conference had previously approved two separate forms to be used by circuit councils in making their reports to the Director. The use of these forms will enable the Director to comply fully with the reporting requirements of the statute.

COMMITTEE ON SELECTION OF LAW CLERKS

Judge Carl McGowan, Chairman of the Committee on the Selection of Law Clerks, reported that the Committee had been in contact with representatives of the Association of American Law Schools and will meet soon to consider the formulation of workable procedures to obviate the confusion that now exists in the selection of law clerks.

AD HOC COMMITTEE ON JUDICIAL REVIEW PROVISIONS IN REGULATORY REFORM LEGISLATION

Judge Carl McGowan, Chairman of the Ad Hoc Committee on Judicial Review Provisions in Regulatory Reform Legislation, stated that the recommendations of the Conference pertaining to judicial review had been incorporated in pending legislation, but that no final action had been taken

in the Congress. The Committee will continue to monitor pending legislation.

COURTROOM FACILITIES

The Conference approved the inclusion of a large ceremonial courtroom in the remodeling of the courthouse in Norfolk, Virginia and because of structural and other problems authorized a variance in size from the Conference approved standards for the ceremonial courtroom as well as two hearing rooms for magistrates.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of the terms of the United States courts of appeals during the calendar year 1983 at the following locations: at Asheville, North Carolina in the Fourth Circuit; at Kansas City, Missouri and Omaha, Nebraska in the Eighth Circuit; and at Oklahoma City, Oklahoma and Wichita, Kansas in the Tenth Circuit.

RELEASE OF CONFERENCE ACTION

The Conference authorized the immediate release of matters considered at this session where necessary for legislative or administrative action.

Warren E. Burger
Chief Justice of the United States

November 12, 1982

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